

Message Text

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ACTION L-02

INFO OCT-01 IO-04 ISO-00 AF-04 ARA-06 EA-06 EUR-08 NEA-06

RSC-01 CIAE-00 DODE-00 PM-03 H-01 INR-05 NSAE-00

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TO SECSTATE WASHDC 6460

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E.O. 11652: N/A

TAGS: UN, PFOR, PLOS

SUBJ: UNGA LEGAL COMITE: DEFINITION OF AGGRESSION

1. GENERAL DEBATE ON SUBJECT ITEM, FOLLOWING COMMENTS OF NOTE WERE MADE.

2. BANGLADESH DEL NOTED ARTICLE 3(D) DOES NOT DIMINISH AUTHORITY OF COASTAL STATES WITHIN THE LIMITS OF THEIR NATIONAL JURISDICTION. BANGLADESH DEL OPINED THAT ADDITION OF AN EXPLANATORY NOTE TO THIS EFFECT TO AGGRESSION TEXT MIGHT BE HELPFUL.

3. YASSEEN INTRODUCED REMARKS SAYING PRESENT TEXT IS BEST WE COULD HAVE REACHED. IRAQ WOULD HAVE PREFERRED TEXT TO CONTAIN CLARIFICATION REGARDING ARTICLE 3(D), THOUGH IS HAPPY TO CONCLUDE THAT IT IS GENERAL OPINION OF LEGAL COMITE MEMBERS THAT ARTICLE 3(D) IN NO WAY DETRACTS FROM A STATE'S EXERCISE OF AUTHORITY IN ITS TERRITORIAL WATERS AND INTERNAL WATERWAYS. HE STATED DEFINITION IS AN INTERPRETATION OF THE CHARTER IN THE FORM OF A RECOMMENDATION TO THE SECURITY COUNCIL. ALSO, THE DEFINITION HAS A DECLARATORY CHARACTER AND COULD BE CONSIDERED COMPULSORY. IN ANY CASE, THE COUNCIL CANNOT IGNORE IT, AND IF THE DEFINITION IS STUDIOUSLY APPLIED IT CAN BECOME AN INTERNATIONAL CUSTOM.

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4. FRG DEL STATED DEFINITION MAY SERVE AS A STANDARD FOR GOVERNMENTS, A GUIDELINE FOR THEM IN DETERMINING THEIR ACTIONS, AS WELL AS THE PARAMETERS OF THEIR RIGHTS UNDER ARTICLE 51 OF THE CHARTER.

5. COLES (AUSTRALIA) NOTED SOME DELS HAVE SOUGHT INCLUSION IN TEXT OF DEFINITION OF AN UNDERSTANDING REGARDING ARTICLE 3(D). AUSTRALIA DEL EXPRESSED HOPE THAT ALL DELS WOULD SHOW GOODWILL ON THIS MATTER. TO THAT END, AUSTRALIA WOULD SUPPORT CONSTITUTION (AFTER END OF GENERAL DEBATE) OF A SMALL GROUP TO NEGOTIATE ANY LANGUAGE NEEDED TO BE INSERTED IN TEXT TO CONVEY THE DESIRED UNDERSTANDING. SPEAKING MORE PRECISELY, AUSTRALIA DEL STATED ITS BELIEF THAT IT IS CLEAR ARTICLE 3(D) DOES NOT DETRACT FROM A STATE'S CAPACITY TO EXERCISE AUTHORITY WITHIN ITS DOMESTIC JURISDICTION. NONETHELESS, AUSTRALIA WOULD NOT OBJECT TO MAKING LATTER POINT EXPLICIT IN THE TEXT OF THE DEFINITION. DELOFF HAD SPOKEN TO COLES PRIOR TO MEETING AND DISCOVERED CANBERRA HAD INSTRUCTED HIM TO PROPOSE A FORMAL AMENDMENT OR A SPECIFIC FOOTNOTE. HE ACQUIESCED IN DELOFF URGING THAT HE NOT GO THIS FAR. HE IS SEEKING NEW INSTRUCTIONS FROM CANBERRA PERMITTING TO CONTINUE TO ACCEPT TEXT AUSTRALIA ACCEPTED AT 1973 AND 1974 SESSIONS OF SPECCOM.

6. HUNGARY, NOTED, EN PASSANT, THAT ORDINARY POLICE ACTION WITHIN THE LIMITS OF ONE STATE'S DOMAIN CANNOT BE VIEWED AS AGGRESSION UNDER ARTICLE 1. HUNGARY ADDED, ARTICLE 3 SHOULD NOT BE READ OUT OF CONTEXT.

7. INDIA DEL FOUND ARTICLE 3(D) AMBIGUOUS, THOUGH IN INDIA'S VIEW THAT PROVISION DOES NOT PREJUDICE COASTAL STATE'S RIGHT TO TAKE MEASURES OF SELF-PROTECTION OR ENFORCEMENT WITHIN THE AREA OF ITS NATIONAL JURISDICTION. INDIA DEL HOPED LEGAL COMMITTEE COULD REACH SUCH AN UNDERSTANDING. INDIA DEL ALSO NOTED TEXT OF DEFINITION IS DEFICIENT IN THAT IT DOES NOT DENOTE AGGRESSION AS AN INTERNATIONAL CRIME.

8. SRI LANKA NOTED THAT IN ITS VIEW ARTICLE 3(D) DOES NOT DETRACT FROM A STATE'S SOVEREIGNTY, TERRITORIAL INTEGRITY OR CAPACITY TO ENFORCE ITS SOVEREIGN JURISDICTION.

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9. PAKISTAN AND ARGENTINA REFERRED TO ARTICLE 3(D) (ATTACK ON MARINE FLEETS). PAKISTAN STATED ARTICLE 3 DOES NOT DETRACT FROM A STATE'S AUTHORITY TO LEGALLY ARREST SHIPS IN ITS JURISDICTION. ARGENTINA STATED IT "AGREED WITH SOME POINTS" MADE BY SOME DELS ON ARTICLE 3(D) AND HOPED POINTS "WILL FIND APPROPRIATE PLACE IN THE DEFINITION".

10. LIBYA IN MORE GENERAL REFERENCE STATED ARTICLE 3 SHOULD NOT

INFLUENCE A STATE'S SOVEREIGN RIGHTS.

1. UK GAVE LONG DISCOURSE EXPLAINING, INTER ALIA, THAT ARTICLE
3(D) DOES NOT INTERFERE WITH LAWFUL ACTIVITY OF A STATE IN
ITS MARITIME JURISDICTION.
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